

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ERIC ANAYA,

Plaintiff,

vs.

No. CIV 99-29 SC/LCS

**WILLIAM J. HENDERSON,
Postmaster General,**

Defendant.

**MAGISTRATE JUDGE'S PROPOSED FINDINGS
AND RECOMMENDED DISPOSITION**

THIS MATTER is before the Court *sua sponte*. Federal Rule of Civil Procedure 4(m) provides:

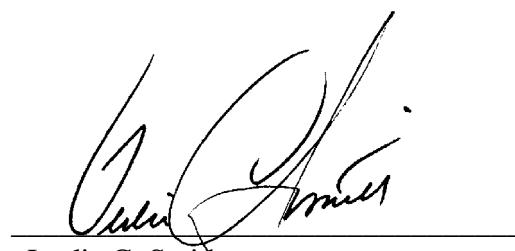
If a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time

The Complaint in this case was filed by the Plaintiff on January 8, 1999. On April 28, 1999, 110 days after the Complaint was filed, this Court Ordered the Plaintiff to either serve the Defendant within 30 days or explain in writing why the case should not be dismissed for failure to prosecute.

As of June 1, 1999, Plaintiff has neither effected service nor responded in writing why he could not do so. Accordingly, I propose finding that Plaintiff does not at this time intend to

prosecute this action and recommend that it be dismissed without prejudice.

Within ten days after a party receives a copy of the Magistrate Judge's Proposed Findings and Recommended Disposition that party may, pursuant to 28 U.S.C. Sec. 636(b)(1), file written objections to them. The party must file its objections within ten days if it desires review; in the absence of timely filed objections neither the District Court nor the Court of Appeals will review the Magistrate Judge's Proposed Findings a



Leslie C. Smith
United States Magistrate Judge